



Sarasota County Sheriff's Office

General Order 23.15

TITLE: Risk Protection Orders		
ORIGINATION DATE: July 1, 2018		REVISION DATE: August 15, 2019
RELATED REFERENCES: <u>F.S.S. §790.401, § 741.30, § 784.046, § 784.0485, § 741.28, 790.401(2)(f), § 790.401(8)(c)</u>		
REVIEWED: July 2019	REVIEWED: NEW	REVIEWED: NEW

I. PURPOSE: The Risk Protection Order Act, hereinafter "the Act" (§ 790.401, Florida Statutes, 2018), was created to establish a legal process to obtain a court order (Risk Protection Order, hereinafter "RPO") to restrict an individual from accessing firearms or ammunition when there is evidence that the person poses a significant danger to himself/herself or others, including significant danger as a result of a mental health crisis or violent behavior. The purpose and intent of the Act is to reduce deaths and injuries resulting from a high-risk individual's use of firearms.

II. SCOPE: This order shall apply to all sworn sheriff's office members and select civilian members.

III. POLICY: It is the policy of the Sarasota County Sheriff's Office to seek a Risk Protection Order against an individual only in situations in which the person poses a significant danger of harming himself/herself or others by possessing a firearm or ammunition.

IV. PROCEDURE:

A. General

1. A Risk Protection Order (hereinafter "final RPO") provides a means to obtain a court order that prohibits, for up to one year in most cases, a person's access to and possession of firearms and ammunition when that person poses a significant danger of harming himself/herself or others by possessing a firearm or ammunition.
2. A Temporary Risk Protection Order (hereinafter "temporary RPO") is a temporary, ex parte RPO issued pending the hearing for the final RPO. Issuance of a temporary RPO requires personal knowledge from the Affiant that *the person poses a significant danger of causing personal injury to self or others in the near future*. A Petition for temporary RPO is filed at the same time as the Petition for final RPO and requires surrender of firearms and ammunition until the court makes a ruling on the final RPO (within 14 days of filing the Petition).

B. Legal Standards for Obtaining a Risk Protection Order

1. **Final Risk Protection Order:** The legal standard required for a final RPO is *whether, by clear and convincing evidence, the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition.*
2. **Temporary Risk Protection Order:** The legal standard required for a temporary RPO is *whether there is reasonable cause to believe that the respondent poses a significant danger of causing personal injury to*

himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.

3. Criteria to be Considered

- a. In determining whether grounds for an RPO exist, the court may consider any *relevant evidence*, including but not limited to:
 - (1) A recent act or threat of violence by the respondent against himself/ herself or others, whether or not such violence or threat of violence involves a firearm.
 - (2) An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself/ herself or others.
 - (3) Evidence of the respondent being seriously mentally ill or having recurring mental health issues.
 - (4) A violation by the respondent of a RPO or a no contact order issued under § 741.30, Florida Statutes (domestic violence injunction), § 784.046, Florida Statutes (injunction for protection against repeat violence/dating violence/sexual violence), or § 784.0485, Florida Statutes (injunction for protection against stalking).
 - (5) A previous or existing RPO issued against the respondent.
 - (6) A violation of a previous or existing RPO issued against the respondent.
 - (7) Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in § 741.28, Florida Statutes.
 - (8) Whether the respondent has used or has threatened to use any weapons against himself/herself or others.
 - (9) The unlawful or reckless use, display, or brandishing of a firearm by the respondent.
 - (10) The recurring use of, or threat to use, physical force by the respondent against another person.
 - (11) The stalking of another person by the respondent.
 - (12) Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.
 - (13) Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.
 - (14) Evidence of recent acquisition of firearms or ammunition by the respondent.
 - (15) Any relevant information from family and household members concerning the respondent.
 - (16) Witness testimony, taken while the witness is under oath, relating to the matter before the court.

C. Procedure for Obtaining a Risk Protection Order

1. When a detective or patrol deputy has contact with a person who may meet the criteria for an RPO, he/she shall notify his/her lieutenant via chain of command. That lieutenant shall contact the on-call lieutenant from the criminal investigations section.

2. The CIS lieutenant shall make a determination whether an RPO shall be sought, and if so, whether criteria for a temporary RPO also exist.
3. The CIS south lieutenant shall assign a detective as a case agent to carry out the investigation and notify the general counsel's office that a RPO is being initiated by emailing RPO@sarasotasheriff.org.
4. The case agent shall then complete the necessary paperwork (found on SharePoint by going to the Home tab, clicking on Resources, then SCSO Forms, then RPO folder and/or the 12th Judicial Circuit Court website at <https://www.jud12.flcourts.org/Documents-Forms/Risk-Protection-Orders>).

a. The case agent shall complete all of the following forms:

(1) Petition

- (a) If seeking a temporary RPO, choose "Petition for Temporary Ex Parte Risk Protection Order and Risk Protection Order."

- i. The Petition for Temporary Ex Parte Risk Protection order and Risk Protection Order will be the most desirable option most of the time because it requires the Respondent to surrender firearms immediately, until the Final Hearing can be held.

- (b) If seeking only a final RPO, choose "Petition for Risk Protection Order."

- i. The Petition for Risk Protection Order will rarely be the best option because there will be a window of up to 14 days before the final hearing is held where the respondent can lawfully possess firearms.

(2) Affidavits

- (a) One "Affidavit" for each witness who has personal knowledge of information being submitted in the Petition. At a minimum, there will be the one affidavit completed by the affiant/case agent.

(3) Proposed Orders (fill out as much as possible)

- (a) If seeking a temporary RPO, submit both:

- i. Order Granting Temporary Ex Parte Risk Protection Order & Order on 3 Day Compliance Hearing and Setting Final Hearing.
- ii. Order Denying Petition for Temporary Ex Parte Risk Protection Order.

- (b) If seeking only a final RPO, submit:

- i. Order Setting Final Hearing on Risk Protection Order.

b. Submission of Forms

(1) During Regular Business Hours

- (a) The case agent shall submit the applicable forms (see C., Procedure for Obtaining a Risk Protection Order above) through the E-Warrant System.
- (b) The case agent shall email a copy of the documents submitted through the E-Warrant System to RPO@sarasotasheriff.org.

- (c) The case agent shall contact an attorney from the general counsel's office to discuss calendar availability for the upcoming ex parte hearing for temporary RPO (if applicable) and the hearing for final RPO.
 - (d) The case agent shall then call the presiding Probate, Guardianship and Mental Health Division judge to advise that the RPO is pending and to schedule the ex parte hearing if a temporary order is requested.
 - (e) If the case agent has a good faith belief that a petition for a temporary RPO should be considered by the court immediately because lives could be in danger, it is the case agent's responsibility to contact and advise the judge of the urgency and to request that an ex parte hearing be held as quickly as possible
 - (f) If no temporary RPO is requested, the judge will enter an order setting a final hearing, if appropriate.
 - (g) If a temporary RPO is granted, the judge will include a date and time for a compliance hearing within 3 business days after issuance of the order and a date and time for a final hearing within 14 days after the date of the temporary RPO.
 - (h) The case agent will receive a signed order electronically from the E-Warrant System. The case agent shall promptly initiate execution of service of the petition and companion documents.
- (2) After Hours, Weekends, and Holidays (Exigent Circumstances)
- (a) Forms for a temporary RPO shall be submitted via the E-Warrant System after normal business hours, on weekends, and on holidays only when the case agent has a good faith belief that lives will be in danger unless a temporary RPO is considered by the court immediately.
 - i. If the case agent determines that a final RPO is necessary, but an immediate temporary RPO is not necessary, then the case agent shall wait until normal business hours to submit the petition for RPO.
 - (b) The case agent shall submit through the E-Warrant System the:
 - i. Petition for Temporary Ex Parte Risk Protection Order and Risk Protection Order.
 - ii. Affidavit(s).
 - iii. Order Granting Temporary Ex Parte Risk Protection Order & Order on 3 Day Compliance Hearing and Setting Final Hearing.
 - iv. Order Denying Petition for Temporary Ex Parte Risk Protection Order.
 - (c) The case agent shall email a copy of the documents submitted through the E-Warrant System to RPO@sarasotasheriff.org and Teletype@sarasotasheriff.org.
 - (d) The case agent shall contact an attorney from the general counsel's office to discuss calendar availability for the upcoming ex parte hearing for temporary RPO (if applicable) and the hearing for final RPO.
 - (e) The case agent shall then call the RPO judge designated in the E-Warrant System at the phone number provided in the E-Warrant System (in the Contact Information section) to

advise him or her that an urgent RPO petition is pending and to request that an ex parte hearing be held immediately.

- (f) If a temporary RPO is granted, the after-hours judge will include a date and time for a compliance hearing within 3 business days after issuance of the order and will set a date and time for a final hearing within 14 days of the order. The compliance hearing and the final hearing will be set in front of the presiding Probate, Guardianship and Mental Health Division judge.
- (g) The case agent will receive a signed order electronically from the E-Warrant System and shall immediately initiate prompt service on the Respondent

5. Notice to Family, Household Member, or Third Party

- a. Upon application for a temporary RPO or final RPO, the case agent shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence by the respondent by providing them with a copy of the Notice to Household Member or Third Party, as mandated by § 790.401(2)(f), Florida Statutes.

D. Service of Risk Protection Orders

1. Service of Temporary RPOs

- a. If the court grants an ex parte temporary RPO, the case agent shall promptly serve on the respondent the following three documents:
 - (1) Petition for Temporary Ex Parte Risk Protection Order and Risk Protection Order
 - (2) Affidavit(s)
 - (3) Order Granting Temporary Ex Parte Risk Protection Order & Order On 3 Day Compliance Hearing and Setting Final Hearing
- b. Service of a temporary RPO shall be made as soon as possible on any day of the week and at any time of the day or night. The case agent shall not wait until business hours to affect service.
- c. The serving case agent shall facilitate the respondent's surrender of firearms, ammunition, and concealed carry permits consistent with guidelines in Section E. (Surrender of Firearms and Ammunition) below.
- d. When service is affected, the case agent shall notify teletype for entry into FCIC/NCIC and shall scan a copy of the Petition, Affidavit, Order and completed RPO receipt to RPO@sarasotasheriff.org.

2. Service of Final RPO

- a. After a final hearing for RPO, an attorney from the general counsel's office will take the court's Order across the street to the clerk's office to obtain certified copies for service, and then walk those certified copies to the civil section to be served.
- b. After service is made by the civil deputy, that deputy shall notify teletype for entry into FCIC/NCIC and scan a copy of the completed paperwork to RPO@sarasotasheriff.org.

3. Service Mailed by the Clerk

- a. If delivery at the hearing and personal service is not possible, the clerk shall mail a certified copy of the RPO to the respondent at the last known address of the respondent and shall notify the sheriff's office at RPO@sarasotasheriff.org

E. Surrender of Firearms and Ammunition

NOTE: The final RPO and temporary RPO require the respondent to surrender firearms and/or ammunition; they do not authorize law enforcement to seize firearms and/or ammunition. A separate search warrant supported by probable cause is required for seizure.

1. When the Respondent is Present in Court when an RPO is Ordered

- a. When a final RPO hearing is scheduled, the case agent shall attend the hearing to provide testimony and to facilitate the surrender of any license to carry a concealed weapon, firearm(s) and/or ammunition owned by or held by the respondent, if not previously surrendered.
- b. The case agent shall document all surrendered items consistent with section 4 (Receipt for Firearms and Ammunition) below.

2. When the Respondent is Served at Home

- a. Upon making contact with the respondent being served with a temporary RPO or final RPO, the deputy shall request that the respondent immediately surrender any license to carry a concealed weapon and all firearms and ammunition owned by or held by the respondent.
- b. The deputy shall take possession of all surrendered firearms and ammunition owned by the respondent and any license to carry a concealed weapon or firearm issued under § 790.06, Florida Statutes held by the respondent.
- c. The deputy shall document all surrendered items consistent with section 3 (Receipt for Firearms and Ammunition) below.

3. Receipt for Firearms and Ammunition

- a. At the time of surrender, the deputy taking possession of any license to carry a concealed weapon or firearm, firearm, and/or ammunition shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered. This shall be achieved by completing the form titled Risk Protection Order - Receipt of Firearms/Ammunition. The RPO receipt shall list the make, model, serial number, caliber, type of weapon (pistol, semi-automatic, etc.) along with any other descriptors such as color.
- b. The deputy shall:
 - (1) Provide a copy of the receipt to the respondent at the time of surrender.
 - (2) Upload a copy of the receipt into WinGS
 - (3) Provide a copy of the receipt to the property & evidence section.
 - (4) Email a copy of the receipt to RPO@sarasotasheriff.org. This will allow the general counsel's office to file a copy of the receipt with the court, which is required by statute.
 - (5) Provide a copy of the receipt to the teletype section at teletype@sarasotasheriff.org.

4. Requests for Transfers to Third Parties

- a. A RPO requires the respondent to surrender to the local law enforcement agency all firearms and ammunition owned by the respondent in the respondent's custody, control, or possession. As such, deputies involved in a respondent's surrender of firearms and/or ammunition shall not consent to allow the respondent to transfer possession of the respondent's firearms and/or ammunition to a third party in lieu of surrendering all firearms and/or ammunition to the Sarasota County Sheriff's Office.
- b. If a respondent does wish to transfer possession of his or her firearms and/or ammunition to a third party, the deputy shall first take possession of all surrendered items and then document the receipt of all items surrendered under the RPO. After all items have been secured, the deputy shall provide the form titled Owner Requests Transfer to Third Party to the respondent. Upon completion of the form, the deputy shall submit it to the sheriff's office property and evidence section along with the surrendered items.
 - (1) Any third-party recipient(s) shall be instructed to contact the sheriff's office property and evidence section for a background screening and retrieval appointment.
 - (2) See section H.1 (Requests by the Respondent to Transfer to Third Party) below for more information.

5. Firearms Owned by Other Household Members

- a. If, while on scene, someone other than the respondent claims title to any firearms or ammunition contained in the household, deputy shall make a good faith effort to determine whether that individual is in fact the rightful owner of the firearm.
- b. If the deputy has good cause to believe a household member other than the respondent is the rightful owner of the firearms or ammunition, the deputy shall advise that person of his or her obligation to store the firearms or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition.

6. Firearms Not Surrendered

- a. If, during the respondent's surrender of firearms and/or ammunition, the deputy becomes aware of any information or evidence that the respondent has not surrendered all firearms and/or ammunition, the deputy shall document all relevant information and notify the case agent so that probable cause for a search warrant can be established.

F. Search Warrants: Seizure of Firearms Not Surrendered

- 1. If there is probable cause to believe that the respondent has failed to comply with the surrender of all firearms and/or ammunition after the respondent has been served with the RPO, the case agent shall apply for a search warrant that describes the firearms or ammunition owned by the respondent and describes the location(s) where the contraband is reasonably believed to be found.

G. Submission of Firearms and Ammunition into Property

- 1. Each firearm and/or ammunition surrendered or seized under the Risk Protection Order Act shall be clearly identified as such when entered into property by affixing a blue "RPO" sticker next to the bar code on the property label.
 - a. Firearms shall be packaged in the boxes provided in property/evidence for firearms.
 - b. Ammunition shall be packaged in the plastic available in the property/evidence section for ammunition.

2. A copy of the Risk Protection Order – Receipt of Firearms/Ammunition shall be submitted into property when the surrendered items are entered into property. However, firearms/ammunition may be submitted into property prior to obtaining a signed RPO upon request of the investigations bureau commander when a RPO is imminent and doing so is in the best interest of the agency.

H. Transfers of Firearms and Ammunition to Third Parties While the RPO is in Effect

1. Requests by the Respondent to Transfer to Third Party

- a. If a respondent has completed an Owner Requests Transfer to Third Party form and the individual(s) identified in the request contacts Property and Evidence, Property and Evidence shall furnish that person with a Transfer to Third Party Agreement Form.
- b. Upon receipt of a completed Transfer to Third Party Agreement Form, the property and evidence section shall conduct a background check on the intended recipient so as to identify whether that person may lawfully possess a firearm.
- c. Upon satisfactory completion of the background check, the property and evidence section shall transfer all items identified by the respondent for transfer to the third party. The original receipt of surrendered items shall be amended to reflect this transfer.

2. Third Party Claims of Actual Ownership of Firearms Seized from Respondent under the Risk Protection Act

- a. If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to the Risk Protection Order Act, the property and evidence section must:
 - (1) Determine whether the person is the lawful owner of the firearm(s) or ammunition.
 - (2) Run a background check to determine whether there is any reason that the person may not lawfully possess the firearm(s) or ammunition.
- b. If both conditions above are satisfactorily met, the property and evidence section shall return the firearms and ammunition belonging to him or her.

I. Termination and Extension of Risk Protection Orders

1. Vacating a Risk Protection Order

a. Requests to Vacate a Risk Protection Order

- (1) If a respondent requests a hearing to vacate an RPO, the clerk will notice the general counsel's office of a date and time for the hearing, which will occur between 14 and 30 days after notice to the general counsel's office.
- (2) An attorney with the general counsel's office will notify the case agent, who will assist the attorney with the hearing.

b. Vacation of a Risk Protection Order

- (1) Upon the Court vacating a RPO, the Clerk's Office shall notice teletype for removal from FCIC/NCIC.
- (2) The case agent shall promptly serve (or send certified mail to individuals outside Sarasota County) the Notice of Termination of Risk Protection Order to Household Member or Third Party to all individuals who were initially noticed of the respondent's Risk Protection Order, as required under § 790.401(8)(c), Florida Statutes.

- (3) Property and Evidence shall promptly return to the respondent all items surrendered under the RPO consistent with Section J (Property and Evidence: Return of Surrendered and/or Seized Firearms, Ammunition, and Concealed Carry Permit) below.

2. Expiration and Extension of a Risk Protection Order

- a. Within 30 days prior to the expiration of a final RPO, the Clerk shall notice the general counsel's office of the impending expiration.
- b. An attorney from the general counsel's office shall notify the CIS lieutenant so that he/she can determine whether it is appropriate to pursue an extension of the RPO for up to one additional year.
- c. The CIS lieutenant shall notify the attorney within 3 business days whether the agency wishes to pursue an extension of the RPO.
- (1) If the decision is made to seek an extension of the final RPO, The CIS lieutenant shall designate a case agent to assist the attorney with the hearing.
- d. Upon extension of or expiration of the RPO, the Clerk shall notify teletype of the change in status, so that FCIC/NCIC may be updated. The general counsel's office shall notify teletype to ensure that FCIC/NCIC has been updated.

J. Property and Evidence Section: Return of Surrendered and/or Seized Firearms, Ammunition, and Concealed Carry Permit.

1. After a RPO is vacated or expired, the property/evidence section must return all surrendered items to the respondent, as requested by the respondent, after conducting the following checks:
 - a. Confirming with the CIS lieutenant that Notice of Termination of Risk Protection Order to Household Member or Third Party of the respondent as required under § 790.401(8)(c), Florida Statutes has been issued.
 - b. Conducting a background check, which shall include but not be limited to FES, CCIS, ClerkNet inquiry and a name search in WinGS, to ensure that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law.
 - c. Confirming with the court that the RPO has been vacated or has ended without extension.
2. The property and evidence section shall notify the general counsel's office and teletype by email through RPO@sarasotasheriff.org advising of the return of firearms, ammunition, and concealed carry permit.
3. Any firearm or ammunition surrendered by a respondent pursuant to the Risk Protection Order Act that remains unclaimed by the lawful owner for 1 year after an order to vacate the RPO shall be disposed of in accordance with property/evidence section policies and procedures for the disposal of firearms.

K. Training of Affected Personnel

1. The agency shall provide training relating to this policy to all sworn members and affected civilian members.

I. GLOSSARY:

PETITIONER: A law enforcement officer or a law enforcement agency that petitions a court for a risk protection order.

RESPONDENT: The individual who is identified as the respondent in a petition for a risk protection order (the individual whom the sheriff's office is seeking to prohibit access to firearms).

RISK PROTECTION ORDER: A temporary ex parte order or a final order granted under the Risk Protection Order Act.

II. INDEXING:

Firearms
Risk Protection
Seizures

APPROVED:



Thomas M. Knight
Sheriff, Sarasota County

Your electronic signature in Power DMS acknowledges you have read this policy and understand it.